

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**SALINAS ACOSTA WEAVER,**

**Plaintiff,**

**v.**

**1:12-cv-4488-WSD**

**SOCIAL SECURITY  
ADMINISTRATION,**

**Defendant.**

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**OPINION AND ORDER**

This matter is before the Court on Magistrate Judge Janet F. King’s Final Report and Recommendation [20] (“R&R”) on Defendant’s Motion to Dismiss the Complaint [14], and Plaintiff’s Motion for Default Judgment [16].

**I. BACKGROUND<sup>1</sup>**

**A. Procedural History**

On January 2, 2013, Plaintiff filed his *pro se* Complaint against Defendant Social Security Administration (“SSA”). [3]. The Plaintiff alleged that the Defendant improperly reduced his disability benefits in December 2012, and also

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<sup>1</sup> The R&R includes a detailed discussion of the relevant facts, both in its fact section and throughout the opinion. None of the parties objected to the Magistrate Judge’s findings of fact, and finding no plain error, the Court adopts them.

withheld \$19,000 owed to him. [Id.]. On April 15, 2013, the Defendant, on behalf of Carolyn W. Colvin, Acting Commissioner of the SSA, filed its Motion to Dismiss the Complaint for lack of subject matter jurisdiction. [14]. On September 20, 2013, the Plaintiff filed his Response to the Defendant's Motion to Dismiss the Complaint. [15]. On the same day, the Plaintiff filed a Motion for Default Judgment alleging that the Defendant failed to respond to the Complaint within the time required by Rule 12(a) of the Federal Rules of Civil Procedure. [16]. On September 30, 2013, the Defendant filed a Response to Plaintiff's Motion for Default Judgment. [19]. On October 7, 2013, Judge King issued her Final R&R. [20]. Judge King recommended that the Defendant's Motion to Dismiss for lack of subject matter jurisdiction be granted because the Plaintiff failed to exhaust his administrative remedies. Judge King also recommended that the Plaintiff's Motion for Default Judgment be dismissed as moot because the Court lacks subject matter jurisdiction over this action. No objections to the R&R have been filed.

## **II. DISCUSSION**

### **A. Standard of Review on the Magistrate Judge's Final R&R**

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1);

Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). Because no objections to the Final R&R have been filed, the Court reviews the R&R for plain error. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984).

B. Subject Matter Jurisdiction

The Magistrate Judge found that the Plaintiff was notified several times by the SSA that he had the option to appeal the agency's decision by filing a request for reconsideration. There is no evidence in the record that the Plaintiff filed a request for reconsideration or otherwise requested a hearing before an administrative law judge. The Court thus finds no plain error in the Magistrate Judge's recommendation that Plaintiff's failure to complete the administrative review process deprives the Court of subject matter jurisdiction over his claims, and this action is required to be dismissed.<sup>2</sup>

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<sup>2</sup> Because the Court concludes that it lacks subject matter jurisdiction over the Plaintiff's claims, the Court finds no plain error in the Magistrate Judge's recommendation that the Motion for Default Judgment is required to be denied as moot. See McEntees Ins. Agency, Inc. v. Valley Nat'l Bank, No. 1-06-cv-1952-GET, 2006 WL 1097839, at \*5 (N.D. Ga. April 21, 2006) (denying plaintiff's motion for default judgment as moot because there was no subject matter jurisdiction over the claims).

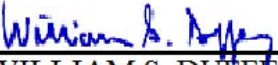
### **III. CONCLUSION**

Accordingly, for the foregoing reasons,

**IT IS HEREBY ORDERED** that the Defendant's Motion to Dismiss is  
**GRANTED.**

**IT IS FURTHER ORDERED** that Plaintiff's Motion for Default Judgment  
is **DENIED AS MOOT.**

**SO ORDERED** this 16th day of December, 2013.

  
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WILLIAM S. DUFFEY, JR.  
UNITED STATES DISTRICT JUDGE